IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

**ORDER**

SB CIVIL WRIT PETITION NO.4730/1994
The State of Rajasthan & anr.
V/s
Guljarilal & anr.

Date of Order : : 15.11.2006

PRESENT
**HON'BLE MR. JUSTICE P.S. ASOPA**

Dr.A.S. Khangarot, Addl. GA, for the petitioners.
Mr.M.F. Baig, for the respondents.

By this writ petition, the State has challenged the exparte award of the Labour Court dated 6.1.1992 and further challenged the order dated 28.3.1994 whereby the restoration application for setting aside the exparte award has been dismissed in default and has further prayed that the application dated 24.12.1992 for setting aside the exparte award be allowed.

2. Briefly stated the relevant facts of the case are that the respondent workman was appointed on the post of Beldar on 15.11.1984 and his services were orally terminated on 31.11.1986. On failure of the conciliation proceedings, the matter was referred to the Labour Court, Jaipur. The evidence of the respondent workman was recorded, but subsequently, no

one appeared on behalf of the State, therefore, exparte proceedings were taken. The Labour Court came to the conclusion that the workman has worked 240 days and his services have been terminated without giving one month's notice or pay in lieu thereof or retrenchment compensation, therefore, the termination was declared illegal and the workman was reinstated with continuity and full back wages. Although the reply was filed before the Labour Court and plea was taken that the respondent workman was employed in a scheme of the Central Government for 100 days, but since there was no evidence to substantiate the said plea, therefore, no finding was recorded by the Labour Court. Subsequently, an application for setting aside the exparte award was filed on 24.12.1992, but the same was dismissed in default on 6.1.1992, therefore, the restoration application was filed and that too was dismissed in default on 28.3.1994.

3. After passing of the aforesaid award, the respondent workman was reinstated on 1.6.1992 and subsequently, the present writ petition was filed in the year 1994. The interim order was passed on 12.2.1996 whereby operation of the award was stayed and the same was confirmed on 20.2.1998. The workman was allowed to continue in service, but it appears that the back wages have not been paid to the

workman.

4. The submission of counsel for the State is that the respondent workman was employed in a scheme, therefore, he is not covered by the provisions of the Industrial Disputes Act, 1947, but there is nothing on record to substantiate the said plea.

5. The submission of counsel for the respondent workman is that the petitioner was not only employed in the said scheme as Beldar, but there are other schemes of the department also in which work has been taken from him. It is further submitted that the Labour Court has rightly held that the respondent workman has completed more than 240 days in the last preceding calender year and further services of the workman have been terminated without giving one month's notice or pay in lieu thereof or retrenchment compensation, therefore, the Labour Court has rightly held that the termination is illegal and void.

6. I have gone through the record of the writ petition and further considered the rival submissions of the parties.

7. I am not inclined to set aside the order of dismissing the application dated 24.12.1992 for setting aside the exparte award as well as order dated 28.3.1994 passed on restoration application for the reason that there is no sufficient ground to condone the default. Otherwise also, in respect of

the termination order passed in the year 1986, no effective opportunity can be afforded to the parties after expiry of 20 years approximately. From the material available on record, the Labour Court had committed no error in computing 240 days in the last preceding one year and further declaring termination violative of Section 25-F of the Industrial Disputes Act, 1947.

8. However, the Labour Court has committed an error in awarding the full back wages without there being any specific finding that workman was not in gainful employment from 31.11.1986 to 6.1.1992, therefore, I deem it proper to reduce the said full amount of back wages to 50% of the back wages with the further direction that in case full amount has been paid then no recovery be made from the workman. The award of the Labour Court dated 6.1.1992 is modified to the aforesaid extent only.

9. The writ petition is disposed of as indicated above.

**(P.S. ASOPA) J.**

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